



FEDERAL ELECTION COMMISSION  
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 2615

DATE SCANNED

6/28/13

SCANNER NO.

2

SCAN OPERATOR

ES

13092690168



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2012 DEC 13 PM 3: 25

December 12, 2012

MEMORANDUM

**SENSITIVE**

TO: The Commission

THROUGH: Alec Palmer *AP*  
Staff Director

FROM: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Debbie Chacona *DC*  
Assistant Staff Director  
Reports Analysis Division

BY: *JW* Jodi Winship/Sari Pickeral *SR*  
Compliance Branch

SUBJECT: Reason To Believe Recommendation – 2012 October Monthly Report  
(Election Sensitive) for the Administrative Fine Program

Attached is a list of political committees and their treasurers who failed to file the 2012 October Monthly Report in accordance with 2 U.S.C. 434(a). The October Monthly Report was due on October 20, 2012.

Under the Administrative Fine Program, the October Monthly Report is considered an election-sensitive filing for authorized committees supporting candidates involved in the general election as well as all unauthorized committees. For the committees listed on the attached RTB Circulation Report, the October Monthly Report was an election-sensitive filing. The committees either failed to file the report or failed to file the report prior to four (4) days before the general election (considered a non-filed report). In accordance with the schedule of civil money penalties for reports at 11 C.F.R. 111.43, these committees should be assessed the civil money penalties included on the attached report.

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### **Recommendation**

1. Find reason to believe that the political committees and their treasurers listed on the RTB Circulation Report violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

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12/12/2012 4:54 PM

Federal Election Commission  
Reason to Believe Circulation Report  
2012 OCTOBER MONTHLY Election Sensitive 10/20/2012 P\_UNAUTH

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
2614	C00389981	MONTEREY COUNTY REPUBLICAN CENTRAL COMMITTEE (FEED.)		THOMAS J. DOMINY	\$543,893	0		Not Filed	\$19,371 (est)	\$990
2615	C00176388	TEXAS INDUSTRIES INC POLITICAL ACTION COMM		DANA L. LINK	\$195,495	0	11/15/2012	Not Filed	\$83,801	\$4,400

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**BEFORE THE FEDERAL ELECTION COMMISSION**

In the Matter of )  
 )  
Reason To Believe Recommendation - 2012 )  
October Monthly Report (Election )  
Sensitive) for the Administrative Fine )  
Program: )  
MONTEREY COUNTY REPUBLICAN ) AF# 2614  
CENTRAL COMMITTEE (FED.), and )  
DOMINY, THOMAS J. as treasurer; )  
TEXAS INDUSTRIES INC POLITICAL ) AF# 2615  
ACTION COMM, and LINK, DANA L. as )  
treasurer; )

**CERTIFICATION**

I, Shawn Woodhead Werth, Secretary and Clerk of the Federal Election Commission, do hereby certify that on December 14, 2012 the Commission took the following actions on the Reason To Believe Recommendation - 2012 October Monthly Report (Election Sensitive) for the Administrative Fine Program as recommended in the Reports Analysis Division's Memorandum dated December 12, 2012, on the following committees:

AF#2614 Decided by a vote of 6-0 to: (1) find reason to believe that MONTEREY COUNTY REPUBLICAN CENTRAL COMMITTEE (FED.), and DOMINY, THOMAS J. as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Federal Election Commission  
Certification for Administrative Fines  
December 14, 2012

Page 2

AF#2615 Decided by a vote of 6-0 to: (1) find reason to believe that TEXAS INDUSTRIES INC POLITICAL ACTION COMM, and LINK, DANA L. as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

December 17, 2012  
Date

Shawn Woodhead Werth  
Shawn Woodhead Werth  
Secretary and Clerk of the Commission

13092690173



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

December 17, 2012

Dana L. Link, in official capacity as Treasurer  
Texas Industries Inc Political Action Comm  
1341 W Mockingbird Lane  
Dallas, TX 75247

C00176388  
AF#: 2615

Dear Mr. Link:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file an October Monthly Report of Receipts and Disbursements covering the period through September 30, 2012. This report shall be filed no later than October 20, 2012. 2 U.S.C. 434(a). Because records at the Federal Election Commission ("FEC") indicate that this report was not filed prior to four (4) days before the General Election held on November 6, 2012, it is considered not filed for the purpose of calculating the civil money penalty.

The Act permits the FEC to impose civil money penalties for violations of the reporting requirements of 2 U.S.C. 434(a). 2 U.S.C. 437g(a)(4). On December 14, 2012, the FEC found that there is reason to believe ("RTB") that Texas Industries Inc Political Action Comm and you, in your official capacity as treasurer, violated 2 U.S.C. 434(a) by failing to file timely this report on or before October 20, 2012. Based on the FEC's schedules of civil money penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at the RTB stage is \$4,400. Please see the attached copy of the Commission's administrative fine regulations at 11 CFR §§ 111.30-111.55. Attachment 1. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. See <http://www.fec.gov/af/af.shtml>. 11 CFR § 111.34. Your payment of \$4,400 is due within forty (40) days of the finding, or by January 23, 2013, and is based on these factors:

Election Sensitivity of Report: Election Sensitive

Level of Activity: \$83,801

Number of Days Late: Not Filed (reports not filed prior to four (4) days before the General Election held on November 6, 2012 are considered not filed for the purpose of calculating the penalty)

Number of Previous Civil Money Penalties Assessed: 0

At this juncture, the following courses of action are available to you:

1. If You Choose to Challenge the RTB Finding and/or Civil Money Penalty

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If you should decide to challenge the RTB finding and/or calculated civil money penalty, you must submit a written response, including the AF# found at the top of page 1 under your committee's identification number, to the FEC's Office of Administrative Review, 999 E Street, NW, Washington, DC 20463. Your response must be received within forty (40) days of the Commission's RTB finding, or January 23, 2013. 11 CFR § 111.35(a). Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty, and must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 CFR § 111.36(c).

The FEC will only consider challenges that are based on at least one of three grounds: (1) a factual error in the RTB finding; (2) miscalculation of the calculated civil money penalty by the FEC; or (3) your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. 11 CFR § 111.35(b). In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. *Id.* Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) a failure of Commission computers or Commission-provided software despite your seeking technical assistance from Commission personnel and resources; (2) a widespread disruption of information transmissions over the Internet that is not caused by a failure of the Commission's or your computer systems or Internet service provider; and (3) severe weather or other disaster-related incident. 11 CFR § 111.35(c). Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to, (1) negligence; (2) delays caused by vendors or contractors; (3) treasurer and staff illness, inexperience or unavailability; (4) committee computer, software, or Internet service provider failures; (5) failure to know filing dates; and (6) failure to use filing software properly. 11 CFR § 111.35(d).

The "failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver" of your right to present such argument in a petition to the U.S. district court under 2 U.S.C. § 437g. 11 CFR § 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

## **2. If You Choose Not to Pay the Civil Money Penalty and Not to Submit a Challenge**

If you do not pay the calculated civil money penalty and do not submit a written response, the FEC will assume that the proceeding factual allegations are true and make a final determination that Texas Industries Inc Political Action Comm and you, in your official capacity as treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA"), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 *et seq.* The FEC may take any and all appropriate

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action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 CFR § 111.51(a)(2).

**3. If You Choose to Pay the Civil Money Penalty**

If you should decide to pay the calculated civil money penalty, send the enclosed remittance form, along with your payment, to the FEC at the address on page 4. Upon receipt of your payment, the FEC will send you a final determination letter.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. § 437g(a)(2). It will remain confidential in accordance with 2 U.S.C. § 437g(a)(4)(B) and 437g(a)(12)(A) until it is placed on the public record in accordance with 11 CFR § 111.42, unless you notify the FEC in writing that you wish the matter to be made public.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. If you have questions regarding the payment of the calculated civil money penalty, please contact Sari Pickerall in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,

*Carole C. Hunter*

Caroline C. Hunter  
Chair

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**ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS**

In accordance with the schedule of penalties at 11 CFR § 111.43, the amount of your civil money penalty calculated at RTB is \$4,400 for the 2012 October Monthly Report.

Please mail this remittance with a check or money order made payable to the Federal Election Commission to the following address:

Federal Election Commission  
P.O. Box 979058  
St. Louis, MO 63197-9000

If you choose to send your remittance and payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox  
FEC #979058  
1005 Convention Plaza  
Attn: Government Lockbox, SL-MO-C2GL  
St. Louis, MO 63101

The remittance and your payment are due by January 23, 2013. Upon receipt of your remittance and payment, the FEC will send you a final determination letter.

**PAYMENTS BY PERSONAL CHECK**

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

**PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT**  
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FOR: Texas Industries Inc Political Action Comm

FEC ID#: C00176388

AF#: 2615

PAYMENT DUE DATE: January 23, 2013

PAYMENT AMOUNT DUE: \$4,400

13092690177



Political Action Committee

**AFFIDAVIT**

Challenge of Civil Money Penalty

AF#: 2615

Texas Industries, Inc. Political Action Committee (TXIPAC)

ID at FEC: C00176388

The Texas Industries, Inc. Political Action Committee (TXIPAC) is submitting this response in order to challenge the proposed Civil Money Penalty issued by the Federal Elections Committee (FEC) on (DATE INSERT HERE, ALSO ANY REFERENCE IDENTIFICATION, AF#2615). The challenge is based on best efforts that were undertaken by the TXIPAC to file in a timely manner. During submittal of our monthly required report in September 2012, we were prevented from filing on-time due to a failure of Commission-provided software despite our seeking technical assistance from Commission personnel and resources. A more detailed summary is included below:

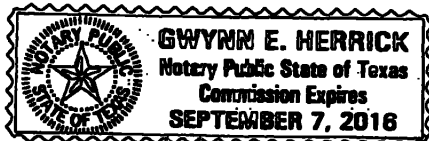
- On September 27<sup>th</sup>, 2012 TXIPAC contacted Paul Stoetzer with the FEC to seek assistance in correcting a line item in our filings.
- With repeated attempts to upload the TXIPAC report for the October 20<sup>th</sup> 2012 filing, the commission-provided software would not allow the completion of the filing.
- Commission staff was not able to make the corrections with the commission-provided software.
- The report has since been amended and correct information has been provided to FEC on November 15, 2012.
- The Texas Industries, Inc. Political Action Committee takes the FEC filing process very seriously and as such worked diligently to maintain ongoing compliance, and has had no monetary fine levied against it in the past.

As a result of these facts and the best efforts made to comply with the October 20<sup>th</sup> 2012 filing deadline, TXIPAC requests that any considered Civil Money Penalty be waived.

22<sup>nd</sup> Day of January 2013

*Gwynn E. Herrick*  
Notary Public

*Dana L. Link*  
TXI PAC Treasurer Dana Link



FEC OFFICE OF  
ADMIN REVIEW

2013 JAN 30 AM 8:10

13092690178

**Date:** January 30, 2013

**REFERRAL TO OFFICE OF ADMINISTRATIVE REVIEW  
CHALLENGE RECEIVED**

**AF#: 2615**

**Committee Name:** Texas Industries Inc Political Action Comm

**Committee ID#:** C00176388

**Committee Address (if different than in RTB letter):** N/A

**Treasurer Name (if different than in RTB finding):** N/A

**Attachments:**

**Copy of RTB Circulation Report, dated December 12, 2012 and RTB Certification, dated December 17, 2012 (Y/N): Y**

**Attachment #: 1**

**Proof of Delivery (to be forwarded at later date if not yet received) (Y/N): Y**

**Attachment #: 2**

**Other Relevant Telecoms (Y/N): N**

**Attachment #: N/A**

**Original Correspondence Received by RAD in Response to RTB Letter (Y/N): N**

**Attachment #: N/A**

**RAD Staff Declaration (Y/N): Y**

**-2012 October Monthly Report Notice, dated August 27, 2012.**

**-Non-Filer Letter, dated November 6, 2012.**

**-RTB Letter, dated December 17, 2012.**

**Attachment #: 4**

**Other RAD Information: (Y/N): N**

**Attachment#: N/A**

13092690179



## Delivery Notification

**Dear Customer,**

**This notice serves as proof of delivery for the shipment listed below.**

**Tracking Number:** 1Z WF5 860 A2 9357 286 1  
**Reference Number(s):** RAD, 2615  
**Service:** NEXT DAY AIR  
**Special Instructions:** ADULT SIGNATURE REQUIRED  
**Shipped/Billed On:** 12/14/2012  
**Delivered On:** 12/18/2012 11:14 A.M.  
**Delivered To:** TXI  
 1341 W MOCKINGBIRD LN  
 DALLAS, TX, US 75247

**Signed By:**

## CHEEK

[illegible]

**Location:** MAIL ROOM

**Thank you for giving us this opportunity to serve you.**

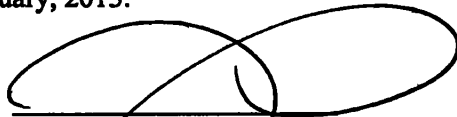
**Sincerely,  
UPS**

**Tracking results provided by UPS: 12/21/2012 4:05 P.M. ET**

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## DECLARATION OF JODI WINSHIP

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission ("Commission"). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to Texas Industries Inc Political Action Comm:
  - A) Report Notice, dated August 27, 2012, referencing the 2012 October Monthly Report (sent via electronic mail to: dlink@txi.com);
  - B) Non-Filer Letter, dated November 6, 2012, referencing the 2012 October Monthly Report;
  - C) Reason-to-Believe Letter, dated December 17, 2012 referencing the 2012 October Monthly Report.
3. I hereby certify that I have searched the Commission's public records and find that Texas Industries Inc Political Action Comm filed the 2012 October Monthly Report with the Commission on November 15, 2012.
4. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed at Washington, D.C. on the 31<sup>st</sup> day of January, 2013.



Jodi Winship  
Chief, Compliance Branch  
Reports Analysis Division  
Federal Election Commission

13092690181



# MONTHLY REPORT NOTICE

FEDERAL ELECTION COMMISSION

PARTIES AND PACS

August 27, 2012

## MONTHLY REPORTING SCHEDULE FOR 2012

### REPORTING DATES

REPORT	CLOSE OF BOOKS <sup>1</sup>	REG/CERT & OVERNIGHT MAILING DEADLINE	FILING DEADLINE
September	08/31/12	09/20/12	09/20/12
October	09/30/12	10/20/12	10/20/12 <sup>2</sup>
Pre-General	10/17/12	10/22/12	10/25/12
Post-General	11/26/12	12/06/12	12/06/12
Year-End	12/31/12	01/31/13	01/31/13

[Click here for Supplemental Filing Information](#)

<sup>1</sup> A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

<sup>2</sup> Notice that this filing date falls on a weekend or federal holiday. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received before the Commission's (or for committees supporting only Senate candidates, the Secretary of Senate's) close of business on the last business day before the deadline.

## 2012 SUPPLEMENTAL FILING INFORMATION PACs AND PARTY COMMITTEES

**PLEASE NOTE:** The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Act and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

### WHO MUST FILE

All Party Committees and PACs (Nonconnected Committees and Separate Segregated Funds) must file either quarterly or monthly reports in 2012. See 11 CFR 104.5(c). Before a committee can stop filing with the FEC, it must file a termination report with the Commission. See 11 CFR 102.3. Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

### METHODS OF FILING REPORTS

#### Electronic Filing

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the filing deadline. See 11 CFR 104.5(e). See also 11 CFR 104.18 and 100.19.

- Web Page: Electronic Filing Page
- Campaign Guide: Nonconnected Committees (Nonconnected), pp. 51-53 [PDF]; Corporations and Labor Organizations (SSF), pp. 49-51 [PDF]; Political Party Committees (Party), pp. 69-71 [PDF].

#### Paper Filing -- Meeting the Filing Deadline

Paper report filing options -- Registered, Certified or Overnight or First Class Mail. See 11 CFR 104.5(e). See also 11 CFR 100.19.

- Web Page: Link to Paper Forms (for downloading and printing)
- Campaign Guide: Nonconnected, pp. 47-48 [PDF]; SSF, pp. 45-46 [PDF]; Party, p. 65 [PDF].

### CHANGE IN FILING FREQUENCY

Committees able to change their reporting schedule (for example, from monthly to quarterly) who wish to do so must notify the Commission in writing and may change their filing frequency no more than once per calendar year. See 11 CFR 104.5(c).

- Web Page: Filing Frequency by Type of Committee
- Campaign Guide: Nonconnected, p. 51 [PDF]; SSF, p. 49 [PDF]; Party, p. 67 [PDF].

### 2012 REPORTING SCHEDULE

- Web Page: 2012 Reporting Dates Page
- The Record:
  - FEC Record Blog: Reporting
  - January 2012 issue [PDF]
- Campaign Guide: Nonconnected, pp. 49-51 [PDF]; SSF, pp. 46-48 [PDF]; Party, pp. 67-68 [PDF].



## PRE-ELECTION REPORTING

Quarterly filing committees that make contributions or expenditures (including independent expenditures) in connection with an election must also file a Pre-Election Report, if the activity was not previously reported. See 11 CFR 104.5(c)(1)(ii).

- Web Page: 2012 Congressional Pre-Primary Reporting Dates Page
- The Record:
  - FEC Record Blog: Reporting
  - January 2012 issue [PDF]
- Campaign Guide: Nonconnected, pp. 49-51 [PDF]; SSF, pp. 46-48 [PDF]; Party, pp. 67-68 [PDF].

## COMPLIANCE

### Treasurer Responsibility

Committee treasurers are responsible for both the timeliness and the accuracy of all reports. They may be subject to monetary penalties if reports are inaccurate or are not filed on time. See 11 CFR 104.14(d).

- Statement of Policy Regarding Treasurers Subject to Enforcement Proceeding [PDF]
- Campaign Guide: Nonconnected, pp. 3-4 [PDF]; SSF, pp. 1-2 [PDF]; Party, pp. 6-7 [PDF].

### Administrative Fine Program

Failure to file reports on time may be subject to civil money penalties up to \$17,600 (or more for repeat late- or non-filers). See 11 CFR 111.43(b). See generally, 11 CFR Part 111 Subpart B. See also 11 CFR 111.43.

- Web Page: Administrative Fine Program Page
- Campaign Guide: Nonconnected, pp. 48-49 [PDF]; SSF, p. 46 [PDF]; Party, p. 66 [PDF].

## DISCLOSURE OF LOBBYIST BUNDLING ACTIVITY

Party committees and Leadership PACs must file FEC Form 3L [PDF] if they receive two or more bundled contributions from lobbyists/registrants or lobbyist/registrant PACs that aggregate in excess of \$16,700 during the applicable reporting period (see page 1 of this notice). See 11 CFR 104.22 and 11 CFR 110.17(f).

- The Record: March 2009 issue [PDF]

## 48- AND 24-HOUR REPORTS OF INDEPENDENT EXPENDITURES

Any PAC or Party Committee that makes independent expenditures in 2012 may have to disclose this activity within 48- or 24-hours based upon the date and amount of the expenditure.

See 11 CFR 104.4(b)(2) and (c). See generally, 11 CFR 104.4.

- Web Page: State-by-state chart of 2012 48- and 24-hour periods for independent expenditures
- Campaign Guide: Nonconnected, pp. 72-74 [PDF]; SSF, pp. 65-67 [PDF]; Party, pp. 87-89 [PDF].

These reports are not required when a PAC or Party Committee makes a contribution directly to a candidate.

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**FOR INFORMATION, CALL: (800) 424-9530 or (202) 694-1100**



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

November 6, 2012

RQ-7

LINK, DANA L., TREASURER  
TEXAS INDUSTRIES INC POLITICAL ACTION COMM  
1341 W MOCKINGBIRD LANE  
DALLAS, TX 75247

IDENTIFICATION NUMBER: C00176388

REFERENCE: OCTOBER MONTHLY REPORT 9/1/2012 - 9/30/2012

DEAR TREASURER:

It has come to the attention of the Federal Election Commission that you may have failed to file the above referenced report of receipts and disbursements or failed to file a report covering the entire reporting period as required by the Federal Election Campaign Act, as amended.

It is important that you file this report immediately with the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Please note that electronic filers must submit their reports electronically, as per 11 CFR §104.18. A copy of the report or relevant portions must also be filed with the Secretary of State or equivalent State officer unless the State is exempt from the federal requirement to receive and maintain paper copies. You can verify the Commission's receipt of any documents submitted by your committee on the FEC website at [www.fec.gov](http://www.fec.gov).

The failure to timely file a complete report may result in civil money penalties, an audit or legal enforcement action. The civil money penalty calculation for late reports does not include a grace period and begins on the day following the due date for the report. Due to heightened security screening measures, delivery of mail by the US Postal Service may be delayed. The Commission recommends that you submit your report via overnight delivery or courier service.

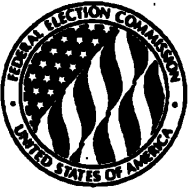
If you have any questions regarding this matter, please contact Chris Ritchie in the Reports Analysis Division on our toll free number (800)424-9530. Our local number is (202)694-1130.

Sincerely,

*Debbie Chacona*

Debbie Chacona  
Assistant Staff Director  
Reports Analysis Division (RAD)

1230903589185



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2013 FEB -7 PM 3: 05

**SENSITIVE**

February 7, 2013

**MEMORANDUM**

To: The Commission

Through: Alec Palmer *AP*  
Staff Director

From: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Rhiannon Magruder *RM*  
Acting Reviewing Officer  
Office of Administrative Review

Subject: Reviewing Officer Recommendation in AF# 2615 – Texas Industries  
Inc Political Action Comm and Dana L. Link, in official capacity as  
Treasurer (C00176388)

The attached Reviewing Officer Recommendation is being circulated on an informational basis. A copy was also sent to the respondents in accordance with 11 C.F.R. § 111.36(f). The respondents may file with the Commission Secretary a written response within 10 days of transmittal of the recommendation.

After the 10 day period, the Reviewing Officer Recommendation and the respondents' written response, if any, will be circulated to the Commission to make a final determination.

Attachment

13092690186



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 7, 2013

**REVIEWING OFFICER RECOMMENDATION  
OFFICE OF ADMINISTRATIVE REVIEW ("OAR")**

AF# 2615 – Texas Industries Inc Political Action Comm and Dana L. Link, in his official capacity as Treasurer (C00176388)

**Summary of Recommendation**

Make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a \$4,400 civil money penalty.

**Reason-to-Believe Background**

On December 14, 2012, the Commission found reason to believe ("RTB") that the respondents violated 2 U.S.C. § 434(a) for failing to file the 2012 October Monthly Report and made a preliminary determination that the civil money penalty was \$4,400 based on the schedule of penalties at 11 C.F.R. § 111.43. A letter, dated December 17, 2012, was mailed to the respondents' address of record by the Reports Analysis Division ("RAD") to notify them of the Commission's RTB finding and civil money penalty.

**Legal Requirements**

The Federal Election Campaign Act ("Act") states that the treasurer of a political committee not authorized by a candidate shall file a report for the period ending September 30 no later than October 20. 2 U.S.C. § 434(a)(4)(B) and 11 C.F.R. § 104.5(c)(3)(i). The October Monthly Report is an election sensitive report pursuant to 11 C.F.R. § 111.43(d)(1). Reports electronically filed must be received and validated at or before 11:59 p.m., Eastern Standard/Daylight Time on the prescribed filing date to be timely filed. 11 C.F.R. §§ 100.19(c) and 104.5 (e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

**Respondents' Challenge**

On January 28, 2013, the Commission received a notarized written response ("challenge") signed by Dana Link, Treasurer, challenging the RTB finding based on the Committee's best efforts to file in a timely manner. The respondents state they "were prevented from filing on time due to a failure of Commission-provided software despite [them] seeking technical assistance from Commission personnel and resources."

The Committee contacted a Reports Analysis Division (RAD) Analyst on September 27, 2012, requesting assistance in "correcting a line item in [their] filings." The Committee made repeated attempts to file the October Monthly Report. However, the "Commission-provided software would not allow the completion of the filing," and "Commission staff was not able to

make the corrections..." The report was amended on November 15, 2012 to provide correct information.

They request the civil money penalty be waived, noting their diligence in maintaining compliance and lack of previous penalties.

### Analysis

While the respondents state they "were prevented from filing on time due to a failure of Commission-provided software despite [them] seeking technical assistance from Commission personnel and resources," there are no records of the Committee contacting the Commission regarding the filing of the 2012 October Monthly Report.

According to RAD telecoms (written records of telephone conversations), Andrew Pinkerton, Committee representative, called the Reports Analyst on September 27, 2012 after receiving a Request for Additional Information (RAI) for their 2012 June Monthly Report. The Reports Analyst spoke to Mr. Pinkerton three times that day, ultimately determining the cash-on-hand and related math discrepancies were caused by the Committee's error in creating a separate data file. The Reports Analyst explained how to correct the issue of multiple data files and advised him to amend any subsequent reports that may be affected. At this point, the October Monthly Report was not yet filed, nor due.

The Manager of the Systems Analysis and Design Branch within the Commission's Information Technology Division ("ITD") confirmed there were no issues with FECFile that may have prevented the Committee from timely filing the report. Therefore, the Reviewing Officer concludes the respondents' statements that "Commission-provided software would not allow the completion of the filing," and "Commission staff was not able to make the corrections..." relate to the issue of multiple data files as discussed with the Reports Analyst on September 27.

On November 15, 2012, the Committee electronically filed the 2012 October Monthly Report, 26 days late. While the challenge states the report was amended on this day, the report is marked as new, and Commission records show no previous filings of the October Monthly Report. The October Monthly Report is an election sensitive report pursuant to 11 C.F.R. § 111.43(d)(1), and the respondents' report is considered not filed pursuant to 11 C.F.R. § 111.43(e)(2).

A committee's failure to use filing software properly is included at 11 C.F.R. § 111.35(d) as an example of a circumstance that will not be considered reasonably unforeseen and beyond the respondents' control. Their challenge fails to meet any of the three valid grounds for challenging the RTB finding or proposed penalty at 11 C.F.R. § 111.35(b). These are: (i) the RTB finding is based on factual errors; and/or (ii) the improper calculation of the civil money penalty; and/or (iii) they used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control and they filed the report no later than 24 hours after the end of these circumstances. The Reviewing Officer, therefore, recommends that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$4,400.

### **OAR Recommendations**

- (1) Adopt the Reviewing Officer recommendation for AF# 2615 involving Texas Industries Inc Political Action Comm and Dana L. Link, in his official capacity as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 2615 that Texas Industries Inc Political Action Comm and Dana L. Link, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$4,400; and
- (3) Send the appropriate letter.

Acting Reviewing Officer: Rhiannon Magruder

### **Attachments**

- Attachment 1 – Challenge Received from Respondents
- Attachment 2 –
- Attachment 3 – Declaration from RAD
- Attachment 4 – Declaration from OAR

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**DECLARATION OF RHIANNON MAGRUDER**

- 1) I am the Reviewing Officer in the Office of Administrative Review for the Federal Election Commission ("Commission"). In my capacity as Reviewing Officer, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
- 2) The 2012 October Monthly Report, covering the period September 1 through September 30, is due October 20, 2012. If electronically filed, it must be received and validated by the Commission at or before 11:59 p.m., Eastern Standard/Daylight Time on October 20 to be timely filed.
- 3) It is the practice of the Reports Analysis Division to document all calls to or from committees regarding a letter they receive or any questions relating to the FECFile software or administrative fine regulations, including due dates of reports and filing requirements.
- 4) I hereby certify that I have searched the Commission's public records and that the documents identified herein are the true and accurate copies of:
  - (a) Page 1 of the Summary Page for the 2012 October Monthly Report electronically filed by Texas Industries Inc Political Action Comm and Dana L. Link, in official capacity as Treasurer. According to the Commission's records, the report covers the period from September 1 through September 30, 2012, and was received on November 15, 2012.
- 5) Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Washington, D.C. on the 7<sup>th</sup> day of February, 2013.



Rhiannon Magruder  
Acting Reviewing Officer  
Office of Administrative Review  
Federal Election Commission

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# **SUMMARY PAGE OF RECEIPTS AND DISBURSEMENTS**

FEC Form 3X (Rev. 02/2003)

Page 2

Write or Type Committee Name

TEXAS INDUSTRIES INC POLITICAL ACTION COMM

Report Covering the Period:

From:

09 01 2012

To:

09 30 2012

	COLUMN A This Period	COLUMN B Calendar Year-to-Date
6. (a) Cash on Hand January 1, 2012		53164.91
(b) Cash on Hand at Beginning of Reporting Period.....	65719.01	
(c) Total Receipts (from Line 19) .....	14801.62	27905.72
(d) Subtotal (add Lines 6(b) and 6(c) for Column A and Lines 6(a) and 6(c) for Column B) .....	80520.63	81070.63
7. Total Disbursements (from Line 31) .....	69065.00	69615.00
8. Cash on Hand at Close of Reporting Period (subtract Line 7 from Line 6(d)) .....	11455.63	11455.63
9. Debts and Obligations Owed TO the Committee (Itemize all on Schedule C and/or Schedule D) .....	0.00	
10. Debts and Obligations Owed BY the Committee (Itemize all on Schedule C and/or Schedule D) .....	0.00	

This committee has qualified as a multicandidate committee. (see FEC FORM 1M)

## **For further information contact:**

Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Toll Free 800-424-9530  
Local 202-694-1100

13092690191





FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

VIA OVERNIGHT DELIVERY

February 7, 2013

Dana L. Link, in official capacity as Treasurer  
Texas Industries Inc Political Action Comm  
1341 W. Mockingbird Lane  
Dallas, TX 75247

C00176388

AF#: 2615

Dear Mr. Link:

On December 14, 2012, the Federal Election Commission ("Commission") found reason to believe ("RTB") that Texas Industries Inc Political Action Comm and you, in your official capacity as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file the 2012 October Monthly Report. The Commission also made a preliminary determination that the civil money penalty was \$4,400 based on the schedule of penalties at 11 C.F.R. § 111.43.

After reviewing the written response and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination in this matter. A copy of the Reviewing Officer's recommendation is attached.

You may file with the Commission Secretary a written response to the recommendation within 10 days of the date of this letter. Your written response should be sent to the Commission Secretary, 999 E Street, NW, Washington, DC 20463. As a result of the anthrax threat in the Washington, DC area, US Postal Service mail delivery to federal agencies, including the Commission, has been interrupted. Until regular mail delivery resumes, you may also file your written response with the Commission Secretary via facsimile (202-208-3333) or by courier at the same address (if you use an overnight delivery service, please use zip code 20004 instead of zip code 20463). Please include the AF # in your response. Your response may not raise any arguments not raised in your original written response or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). The Commission will then make a final determination in this matter.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1660 if you have any questions.

Sincerely,

*Rhiannon Magruder*

Rhiannon Magruder  
Acting Reviewing Officer  
Office of Administrative Review

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*Political Action Committee*

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2013 FEB 19 A 8:24

February 16, 2013

Via Facsimile (202) 208-3333

Shawn Woodhead Werth, in official capacity as Commission Secretary  
Federal Election Commission  
999 E Street, NW  
Washington, DC 20463

Reference: AF#: 2615

Dear Ms. Werth,

I am writing you today as a response to the Reviewing Officer's recommendation, which was communicated via letter dated February 7, 2013, of the Texas Industries, Inc. Political Action Committee ("TXI PAC") Challenge of Civil Money Penalty for violating 2 U.S.C 5 434(a) for failing to file the 2012 October Monthly Report. In consideration of the Reviewing Officer's recommendation to assess a \$4,400 civil money penalty, the TXI PAC respectfully requests that such penalty be waived as outlined below.

It is important to reiterate that the TXI PAC made a concerted attempt to submit an accurate filing using the provided FECFile software; however, the TXI PAC was not able to file on time due to a legitimate effort to make a correction to our reports. Above all, the intention of the TXI PAC was for the reporting to be accurate, as illustrated by the fact that assistance was first sought with Federal Election Commission (FEC) personnel to address this issue 23 days before the due date of the report.

The Analysis from the Review Officer states that the Manager of Systems Analysis and Design Branch within the Commission's Information Technology Division confirmed there were no issues with FECFile that prevented us from a timely filing. While there might not have been an issue with the FECFile software preventing the act of filing the report, it still did not allow for certain changes to be made that affected the TXI PAC's ability to upload the report with the appropriate adjustments. As stated previously, committee representative Andrew Pinkerton spoke with a Reports Analyst three times to correct a math discrepancy that the TXI PAC was trying to change to ensure the accuracy of filing. Further attempts were not made to seek help from the FEC due to the conversation with the Reports Analyst, indicating that what we tried had not been successful, and that he did not know how to help with the problem. Had the Reports Analyst directed us to another division within the FEC to contact, or provided any other means by which to correct the uploading information, we would have pursued that direction.

As such, we do not believe that the software was being used improperly as stated in the analysis from the Reviewing Officer's recommendation, and therefore do not feel that should be the basis of an

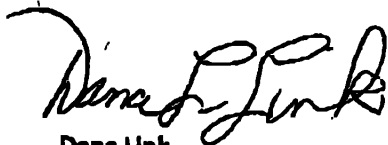
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example of a circumstance that will not be considered reasonably unforeseen and beyond our control included at 11 C.F.R § 111.39(d).

The TXI PAC fully understands the importance of diligent and accurate reporting and timely filing, as reflected in the fact that there have been no previous instances of noncompliance with FEC requirements. We are committed to working with the FEC to ensure that the information provided is correct and done so within the boundaries of regulatory compliance with FEC rules, and will continue to do so as we move forward.

Thank you for your consideration of this response.

Sincerely,

A handwritten signature in black ink, appearing to read "Dana Link", written in a cursive style.

Dana Link  
Treasurer  
TXI PAC

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

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SECRETARIAT

2013 FEB 20 PM 5: 05

February 20, 2013

MEMORANDUM

**SENSITIVE**

To: The Commission

Through: Alec Palmer *AP*  
Staff Director

From: Patricia C. Orrock *PCO*  
Chief Compliance Officer

Rhiannon Magruder *RM*  
Acting Reviewing Officer  
Office of Administrative Review

Subject: Final Determination Recommendation in AF# 2615 – Texas Industries Inc  
Political Action Comm and Dana L. Link, in his official capacity as Treasurer  
(C00176388)

On December 14, 2012, the Commission found reason to believe ("RTB") that the respondents violated 2 U.S.C. § 434(a) for failing to file the 2012 October Monthly Report and made a preliminary determination that the civil money penalty was \$4,400 based on the schedule of penalties at 11 C.F.R. § 111.43.

On January 28, 2013, the Commission received their written response ("challenge"). After reviewing the challenge, the Reviewing Officer's recommendation ("ROR") dated February 7, 2013, was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The Reviewing Officer recommended that the Commission make a final determination that they violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$4,400 because they submitted no evidence that a factual error was made in the RTB finding, that the penalty was miscalculated at RTB or that they used best efforts to file on time. 11 C.F.R. § 111.35(b).

Within 10 days of transmittal of the recommendation, they may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the ROR. 11 C.F.R. § 111.36(f).

On February 19, 2013, the Commission received the written response from the Treasurer again requesting the penalty be waived. The respondents reiterate they made attempts to correct known math discrepancies to file accurate reports, yet FECFile "did not allow for certain changes

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to be made that affected [their] ability to upload the report with the appropriate adjustments." The respondents state they first contacted the Commission for assistance 23 days before the filing deadline and spoke to a Reports Analysis Division (RAD) Analyst on three occasions. The response then explains:

"Further attempts were not made to seek help from the FEC due to the conversation with the Reports Analyst, indicating that what we tried had not been successful, and that he did not know how to help with the problem. Had the Reports Analyst directed us to another division with the FEC to contact, or provided any other means by which to correct the uploading information, we would have pursued that direction."

As discussed in the ROR, according to RAD telecoms (written records of telephone conversations), the Reports Analyst spoke to Mr. Pinkerton three times on September 27, 2012 regarding the Committee's math discrepancies. In their final conversation, the Reports Analyst ultimately determined the math discrepancies were caused by the Committee's error in creating a separate data file. Contrary to the respondents' statement that the Reports Analyst was unable to help with the problem, the Reports Analyst explained two options for correcting the issue of multiple data files.

While the respondents state they do not believe they failed to use filing software properly, the Reports Analyst provided adequate guidance to allow the Committee to resolve its math discrepancies and ensure accurate filings well before the October Monthly filing deadline. In addition, the Manager of the Systems Analysis and Design Branch within the Commission's Information Technology Division ("ITD") confirmed there were no issues with FECFile that may have prevented the Committee from timely filing the report. Finally, Commission records indicate the Committee made no further attempts to contact the Commission for related assistance. Therefore, the Reviewing Officer recommends that the Commission make a final determination that the respondents violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$4,400.

#### **OAR Recommendations**

- (1) Adopt the Reviewing Officer recommendation for AF# 2615 involving Texas Industries Inc Political Action Comm and Dana L. Link, in his official capacity as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 2615 that Texas Industries Inc Political Action Comm and Dana L. Link, in his official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$4,400; and
- (3) Send the appropriate letter.

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 ) AF 2615  
Final Determination Recommendation: )  
Texas Industries Inc Political Action )  
Comm and Dana L. Link in his official )  
capacity as treasurer (C00176388) )

CERTIFICATION

I, Shelley E. Garr, recording secretary for the Federal Election Commission executive session on May 21, 2013, do hereby certify that the Commission decided by a vote of 4-1 to otherwise terminate the proceedings in AF# 2615.

Commissioners Hunter, McGahn II, Petersen, and Walther voted affirmatively for the decision. Commissioner Weintraub dissented.

Attest:

May 23, 2013  
Date

Shelley E. Garr  
Shelley E. Garr  
Deputy Secretary of the Commission

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

May 31, 2013

Dana L. Link, in official capacity as Treasurer  
Texas Industries Inc. Political Action Comm.  
1341 W. Mockingbird Lane  
Dallas, TX 75247

C00176388

AF#: 2615

Dear Mr. Link:

On December 14, 2012, the Federal Election Commission ("Commission") found reason to believe ("RTB") that Texas Industries Inc. Political Action Comm. and you, in your official capacity as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to file the 2012 October Monthly Report. By letter dated December 17, 2012, the Commission sent notification of the RTB finding that included a civil money penalty calculated at RTB of \$4,400 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On January 28, 2013, the Office of Administrative Review received your written response challenging the RTB finding.

The Reviewing Officer reviewed the Commission's RTB finding with its supporting documentation and the written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Texas Industries Inc. Political Action Comm. and you, in your official capacity as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty in the amount of \$4,400 in accordance with 11 C.F.R. § 111.43. A copy of the Reviewing Officer Recommendation (ROR) was sent to you on February 7, 2013. On February 19, 2013, the Commission received your written response to the ROR.

On May 21, 2013, the Commission failed to adopt the Reviewing Officer's recommendations contained in the Final Determination Recommendation (attached). The Commission then voted to terminate the proceedings pursuant to 11 C.F.R. § 111.37(b) and close the file.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. The file will be made a part of the public record pursuant to 11 C.F.R. § 111.42(b). Although the file must be placed on the public record within 30 days from the date of the Commission's notification, this could occur at any time following certification of the Commission's vote.

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If you have any questions regarding this matter, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

On behalf of the Commission,



Ellen L. Weintraub  
Chair

Attachment

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FEDERAL ELECTION COMMISSION  
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 2615

DATE SCANNED

6/28/13

SCANNER NO.

2

SCAN OPERATOR

ΣΣJ

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